

VZCZCXRO8106
PP RUEH DU RUEHJO
DE RUEHSA #0646/01 0461311
ZNR UUUUU ZZH
P 151311Z FEB 06
FM AMEMBASSY PRETORIA
TO RUEHC/SECSTATE WASHDC PRIORITY 1575
INFO RUEHBU/AMEMBASSY BUENOS AIRES 0182
RUEHTN/AMCONSUL CAPE TOWN 2378
RUEH DU/AMCONSUL DURBAN 7459
RUEHJO/AMCONSUL JOHANNESBURG 3881
RUEATRS/DEPT OF TREASURY WASHDC
RUCPDC/DEPT OF COMMERCE WASHDC

UNCLAS SECTION 01 OF 04 PRETORIA 000646

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DEPT FOR AF/S; AF/EPS; EB/TPP/MTA
USDOC FOR 4510/ITA/IEP/ANESA/OA/JDIEMOND
DEPT PASS USTR FOR FLISER
TREASURY FOR BCUSHMAN

E.O. 12958: N/A

TAGS: [EINV](#) [ETRD](#) [EFIN](#) [ECON](#) [USTR](#) [SF](#)

SUBJECT: SOUTH AFRICA: DRAFT BEE CODE 400: SKILLS
DEVELOPMENT

REF: (A) PRETORIA 4854

- (B) PRETORIA 4855
- (C) PRETORIA 4856
- (D) PRETORIA 337
- (E) PRETORIA 575

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¶1. (U) Summary. The South African Department of Trade and Industry (DTI) released for public comment drafts of Broad-based Black Economic Empowerment (BEE) Codes of Good Practice belonging to the second and final phase on December 20, 2005. The Minister of Trade and Industry plans to promulgate both the first (which have been finalized) and the second phases of the BEE Codes of Good Practice before the end of 2006. Included in the second phase is Code ¶400. This code sets forth the scoring criteria for firms striving to comply with BEE objectives as they relate to skills development. The Skills development portion accounts for 20% of the BEE scorecard. In most instances, the actual number of points awarded is calculated by multiplying the fraction of a compliance target (Code 400 has thirteen) achieved by the number of possible points allotted for each target. In a recent meeting of their BEE Committee, members of the local American Chamber of Commerce voiced a number of concerns about this draft Code. Comments on all BEE codes of good practice belonging to the second phase must be submitted to DTI by March 31 2006. End Summary.

¶2. (U) On December 20 2005, the South African Department of Trade and Industry (DTI) released for public comment drafts of BEE Codes of Good Practice belonging to the second and final phase. Comments on these draft codes must be submitted to DTI by March 31 2006. While the BEE Codes of Good Practice belonging to the first phase have been finalized (Refs A, B, and C), the Minister of Trade and Industry will not promulgate them until the codes belonging to the second phase have also been finalized. DTI wants this to occur before the end of 2006.

¶3. (U) Codes belonging to the second phase deal with employment equity (Code 300), skills development (Code 400), preferential procurement (Code 500), enterprise development (Code 600), residual contributions (Code 700), and small and medium sized enterprises (code 1000 - 1700). Also included in the second phase are subsections to Codes 000 (the BEE Framework for Measurement) and 100 (BEE Equity). The two subsections for Code 000 deal with misrepresenting BEE status (Statement 001) as well as and verification issues relating to complex structures (Statement 002). The four subsections for Code 100 deal with guidelines for the recognition of BEE ownership by BEE targeted warehouse funds (Statement 102), multinational companies (Statement 103), public entities and organs of the state (Statement 104), and companies limited by guarantee and Section 21 (i.e. nonprofit) companies (Statement 105). All may be sourced from DTI's website: www.thedti.gov.za.

¶4. (U) This cable focuses on Code 400, which sets forth the scoring criteria for firms striving to comply with BEE objectives as they relate to skills development. Subsequent cables will address issues of import that the other draft codes present.

CODE 400

¶5. (U) Code 400 identifies thirteen compliance targets pertaining to skills development which together comprise 20% of the BEE scorecard. For

PRETORIA 00000646 002 OF 004

most targets, the actual number of points awarded is calculated by multiplying the fraction of a compliance target achieved by the number of possible points allotted for each target. However, some targets simply require the existence of a plan or an officer in charge. Excess scoring for exceeding any of the skills development targets is not possible. For a complete understanding as to how this portion of the generic scorecard is factored into the rest of the scorecard, please refer to Ref A.

¶6. (U) Under Code 400, a firm can score four points if it spends 3% of payroll on skills development for black employees. A firm can score two points if it spends 2.6% of payroll on the development of critical and core skills for black employees. A firm can score two points if it spends 1.4% of payroll on the development of critical and core skills for black women employees. A firm can score another point if it spends 0.3% of payroll on the skills development of black employees with disabilities.

¶7. (U) Code 400 allows any skills development expenses related to an Adult Basic Education and Training (ABET) program to be recognized at a multiple of 1.25. This means \$100,000 would be recognized as \$125,000 for the purposes of the BEE scorecard. ABET programs range from basic literacy and numeracy to business and entrepreneurship. They are targeted toward those who were denied educational opportunities during apartheid.

¶8. (U) A firm can score two points if Black South Africans participating in Sector Education and Training Authority (SETA) internship programs number 5% of the total employees. A firm can score two points if half these Black interns are women. A firm can score another point if a fifth of these Black interns are formerly unemployed and/or from rural areas.

¶9. (U) In addition, a firm can score one point for each of the following:

- Implementing a comprehensive, board approved, BEE strategy that integrates all the elements of the BEE scorecard;
- Employing a skills development facilitator;
- Implementing a policy on non-discrimination that is widely published within the firm and which emphasizes the promotion of racial, gender, religious and cultural diversity. Regular and ongoing facilitation of external diversity management training should be a part of implementation.
- Complying with all relevant employment related legislation.
- Implementing an effective human resource management plan, with measurable performance targets, with the emphasis on retention, career development and long-term career planning of all employees including learners.
- Publishing the outcome of routine organizational, social, and environmental audits designed to give practical effect to the BEE strategy and the human resource plan.

¶10. (U) The following table lists criteria, points, and targets for deriving a score on skills development:

Criteria	Points
Target	
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PRETORIA 00000646 003 OF 004

Skills Development:		% of
Payroll		
Black employees	4	
3.0%		
Critical/core skills of black employees	2	
2.6%		
Critical/core skills of black women emp.	2	
1.4%		
employees with disabilities	1	Black 0.3%

Learnerships:		% of
employees		
Black employees on SETA learnerships	2	
5.0%		
Black women on SETA learnerships	2	
2.5%		
unemployed and/or	1	Black people formerly 1.0%
from rural areas		

Organizational Transformation Index:		
BEE strategy	1	Yes
Skills development Facilitator	1	Yes
Policy on non-discrimination	1	Yes
Compliance with employment legislation	1	Yes
Human resource management plan	1	Yes
Programme to give effect to policies	1	Yes

CONCERNS

¶11. (SBU) On February 1, members of the BEE Committee of the local American Chamber of Commerce met to discuss draft Code 400. Some members regarded the

skills development targets for black women, black people with disabilities, and learnerships as beyond the reach of most labour intensive industries, (e.g., mining, manufacturing, and construction). The 5% target for one-year paid internships was high for some firms, but achievable for others. In particular, the productivity of new employees or interns in manufacturing was considerably lower than an experienced employee, for whom companies would like to keep on the production line. Some noted that expenditure on training was in addition to training funded by the current 1% skills development tax. One participant proposed that the term "black people formerly residing in rural areas" be clarified as it might be difficult to prove that a person was from a rural area. Noting that the increased cost of doing business in South Africa would change the incentive to invest in the country, members of the committee agreed to model the cost of compliance of various targets and codes for the government.

Pertinent Definitions

¶12. (U) Code 000 defines "black" as black, "coloured," and Indian South Africa citizens (or those who could have applied for South African citizenship, if permitted) who suffered or whose descendants suffered discrimination under the apartheid regime.

¶13. (U) The Sector Education and Training Authority (SETA) was established to ensure that the skill needs for every sector of the South African economy are identified and that training is available to provide for these skill needs. The implementation of SETA programs has been subject to considerable criticism from different political circles.

¶14. (U) According to the Employment Equity Act 55 of 1998, "black people with disabilities" means black people who have a long-term or recurring physical or mental impairment which substantially limits their prospects of entry into, or advancement in,

PRETORIA 00000646 004 OF 004

employment.

¶15. (U) "Core skills" means skills that are related to any of the following:

- value-adding activities in line with the core business;
- areas of business that cannot be outsourced; or
- activities within the production/operational component of the value-chain.

¶16. (U) "Critical skills" are those skills to be identified by each SETA in accordance with the National Skills Development Strategy.

¶17. (U) "National Skills Development Strategy" means the national skills development strategy referred to in Section 5(1) (a) (ii) of the Skills Development Act as further qualified in the strategy released by the Department of Labour in March 2005, covering the period April 1 2005 to March 31 2010.

¶18. (U) According to the BEE Codes, "learnerships", or as we term them in this cable "internships," refer to the skills development programs approved by the relevant SETA having jurisdiction over each of the entities areas of operation and which are fully certified in accordance with the National Qualifications Framework maintained in terms of South African Qualifications Authority Act.

